



## Interpretive Notice & Formal Opinion (“INFO”) # 1:

### Colorado Overtime & Minimum Pay Standards Order (COMPS Order) #36, 7 CCR 1103-1 (2020)

#### Overview

As of March 16, 2020, [Colorado Overtime and Minimum Pay Standards Order \(“COMPS Order”\) #36](#) replaces Colorado Minimum Wage Order (“MWO”) #35. The COMPS Order is the source of key wage rights and responsibilities: eligibility for the Colorado minimum wage; overtime pay for work over 40 hours a week or 12 a day; meal and rest breaks; and rules on wage deductions, on what work time must be paid, and on posting the COMPS Order to employees. This INFO #1 summarizes key parts and interpretations of COMPS Order #36. Future INFOS will offer more detail on various topics within COMPS and in other sources of wage law.

#### Coverage

Prior MWOs covered only 4 industries: Retail/Service; Food/Beverage; Health/Medical; & Commercial Support Service. The COMPS Order covers all private sector work unless exempted by Rules 2.2-2.4 (detailed below). As of January 1, 2020, Colorado statutes broadened the definitions of covered “employees” and “employers” in [C.R.S. 8-4-101\(5\),\(6\)](#), which COMPS Order Rules 1.5-1.6 now follow.

#### Colorado Minimum Wage (Rule 3)

The 2020 Colorado minimum wage is **\$12.00 per hour** for employees covered by **either** (A) Rule 2 coverage of all private sector work unless listed as exempt or (B) the federal minimum wage. Pay cannot be below the minimum even if it is a salary, piece rate, commission, or other basis, except minimum wages may be reduced:

- by 15% for non-emancipated minors and for persons certified by the Division as less efficient due to physical disability -- with 15% the maximum reduction, even if federal law permits lower wages; and
- by deductions permitted by Rule 6 or by the wage deductions statute, [C.R.S. 8-4-105](#).

If a local government (city, county, etc) has enacted a higher minimum wage, work covered by the local minimum wage ordinance must be paid that higher wage.

#### Overtime Pay (Rule 4)

Employers must pay **1½ times** the employee’s regular rate of pay -- often called “time and a half” -- for work beyond either (A) **40 hours per week**, (B) **12 hours per day**, or (C) any **12 consecutive hours**, whichever results in the higher payment of wages. Hours in two or more weeks cannot be averaged in computing overtime. Employers may not provide time off, sometimes called “comp time,” instead of paying time and a half for overtime hours. Rule 1.8.2 covers when and how a non-exempt employee can still be paid a salary (or other non-hourly pay), as long as overtime premium pay is added for any overtime hours.

#### Meal Periods (Rule 5.1)

For **shifts over 5 hours**, employees are entitled to uninterrupted, duty-free **30-minute** meal periods.

- Employees must be **completely relieved of all duties**, and permitted to pursue personal activities, for a meal period to be non-work, unpaid time.
- To the extent practical, meal periods must be at least **1 hour after** starting and **1 hour before** ending shifts.
- If the work makes an uninterrupted meal period impractical, the employee shall be permitted to consume an on-duty meal while performing duties, and that time **must be compensated**.

**Rest Periods** (Rule 5.2)

For **each 4 hours** of work, employers must authorize and permit compensated **10-minute** rest periods:

<u>Work Hours</u>	<u>Rest Periods Required</u>
2 or fewer	0
Over 2 and up to 6	1
Over 6, and up to 10	2
Over 10, and up to 14	3
Over 14, and up to 18	4
Over 18, and up to 22	5
Over 22	6

Rest periods **must not include work**, but leaving the premises is not necessary. To the extent practical, rest periods should be **in the middle** of each 4-hour work period. If an employee is not authorized and permitted a required rest period, then extra work has been performed, requiring **additional pay** for that time.

Rest periods must be 10 minutes every four hours except in either of these situations:

- if an employee and employer agree, voluntarily and without coercion, as long as 5 minutes is enough to go back and forth to a bathroom or other place where a bona fide break would be taken; or
- if work is agricultural, Medicaid-funded home care, *or* under a collective bargaining agreement, then rest periods can be 5 minutes in a 4-hour period, if over the day they average 10 minutes per 4 hours.

**Time Worked** (Rule 1.9)

Compensable “time worked” is **all time performing labor or services for an employer’s benefit**, including all time employees are suffered or **permitted to work, whether or not required**. It includes time employers permit or require employees to be on-premises, on duty, or at prescribed workplaces, but not just letting employees relieved from duty arrive or remain on-premises. It also includes, if over one minute, time spent:

- putting on or removing required work clothes or gear, but not uniforms worn outside work as well;
- remaining at work awaiting a decision on a job assignment or when to begin work;
- receiving or sharing work-related information;
- performing clean-up or other duty “off the clock”;
- security or safety screening;
- clocking or checking in or out;
- or waiting for any of the tasks listed above.

“**Travel time**” means time spent on travel for the benefit of an employer, and is time worked, but normal home to work travel is not time worked. Rule 1.9.2 details what travel to or from work stations is compensable.

“**Sleep time**” means time employees may sleep, which may or may not have to be paid, as Rule 1.9.3 details.

**Exemptions from COMPS** (Rule 2.2)

Rule 2 should be read carefully to see if particular work is partially or fully exempt.

- **Executives/Supervisors, Administrative Decision-Makers, and Professionals** (defined in R. 2.2.1-2.2.3), who are paid at least the salary required by R. 2.5 (described on the next page).
- **Outside salespersons** if at least 80% of their work time is related to their sales (R. 2.2.4).
- **A 20% owner** of a company, or at a **nonprofit, the highest-paid/highest-ranked** employee, if they are **actively engaged in management** of the employer (R. 2.2.5).
- **Various interstate transport** workers and government-licensed **taxi drivers** (listed in R. 2.2.6).
- **Various in-residence workers** (defined in R. 2.2.7) -- casual babysitters, property managers, student residence workers, institutional laundry workers, range workers, camp/outdoor education field staff.
- **Bona fide volunteers** for non-profits and **work-study students** receiving school credit (R. 2.2.8).
- **Elected officials** and their staff (R. 2.2.9).
- **Highly technical computer-related** employees (defined in R. 2.2.10), if paid at least **\$27.63** per hour.

**Exemptions for Agriculture** (Rule 2.3)

Agriculture jobs (defined in Rule 2.3) are exempt from the overtime and meal period rules. Agriculture jobs that are exempt from the federal minimum wage are also exempt from the Colorado minimum wage. Neither exemption applies to agricultural employers drawing at least 50% of their revenue from sales to the consuming public (rather than for resale); such employers were covered as “retail and service” under prior wage orders.

**Exemptions from Overtime Requirements** (Rule 2.4)

- **Salespersons or mechanics** employed by **certain vehicle or farm equipment** dealers -- exempt from **all overtime** (R. 2.4.1).
- **Commission salespeople** of a retail/service employer drawing 75% of its revenue from sales, if paid at least (A) ½ from commissions and (B) 1½ of minimum wage -- exempt from **all overtime** (R. 2.4.2).
- **Ski** employees with duties (A) directly related to downhill ski/snowboarding or (B) in on-mountain food/beverage services, but not (C) related to lodging -- exempt from **40-hour** weekly overtime (R. 2.4.3).
- **Medical transportation** employees on 24-hour shifts -- exempt from **12-hour** daily overtime (R. 2.4.4).
- **Hospital or nursing home** employees paid under the federal **8/80** rule requiring overtime for hours past (A) 80 per 14-day period and (B) 8 per day -- exempt from **40- and 12-hour overtime** (R. 2.4.5).

**Salary Required for Executive/Supervisor, Administrative, & Professional (“EAP”) Exemptions** (Rule 2.5)

The EAP exemptions require **both (A) exempt duties** (defined in R. 2.2.1-2.2.3) **and (B) a minimum salary** for exemption (except doctors, lawyers, and teachers are exempt without a minimum salary, as in federal law). For COMPS Order exemptions requiring a salary, for purposes of determining what is a qualifying “salary,” the “Salary Requirement” rules of the federal Fair Labor Standards Act in 29 C.F.R. Part 541, Subpart G, apply.

Until July 2020	July - Dec. 2020	2021	2022	2023	2024	Each Year After 2024
Salary equal to minimum wage for all hours worked	\$35,568	\$40,500	\$45,000	\$50,000	\$55,000	The prior year’s salary, inflation-adjusted

For pay to qualify as an exempt “salary,” it must meet the federal law definition of an exempt salary: Pay that is **predetermined**, for a **week to a month**, and is **not reduced** because of variation in work quality, work quantity, or number of hours -- except that, as under federal law, **deductions may** be made for the following:

- absence for 1+ days for **personal** reasons;
- absence for 1+ days for **sickness or disability** under a bona fide plan, policy, or practice of compensating the lost salary;
- leave under **family/medical** leave law;
- good-faith penalties under major **safety** rules, or unpaid disciplinary suspensions of 1+ days under **workplace conduct** rules; or
- amounts employees receive as **jury/witness** fees or military **pay**.

The salary rule, however, does not *require anyone* to be paid these salaries. **Employers have options** for compliance: (a) pay the exemption **salary**, or (b) pay any rate **hourly with overtime**, or (c) shift hours among employees to **minimize overtime**.

**Deductions, Credits, and Charges** (Rule 6)

Colorado law, [C.R.S 8-4-105](#), limits the deductions employers may make from employee wages. COMPS adds specifics on limits for deductions, credits, and charges related to uniforms, meals, or lodging.

- **Lodging credits** are allowed for housing if it is: (1) voluntarily accepted by the employee; (2) primarily for the benefit and convenience of the employee and not the employer; (3) recorded in a written agreement; and (4) depending on the type of lodging, no more than \$25 or \$100 per week (or less, depending on the fair market value or actual cost to the employer).
- **Meal credits** are allowed for the cost or value (without profit) of meals that employees voluntarily accept.

- **Uniforms** need not be furnished if they are ordinary, plain, and washable clothing, and a special color, make, pattern, logo, or material is not required. But employers must pay for particular uniforms or special apparel. Employers also cannot require deposits or deduct for ordinary uniform wear and tear.
- **Tip credits** of no greater than \$3.02 per hour may offset wages of employees in occupations in which they customarily and regularly receive over \$30 per month in tips. An employer claiming a tip credit must pay at least \$8.98 per hour (the 2020 Colorado tipped minimum wage rate), and if that wage plus tips does not equal the minimum hourly wage, the employer must make up the difference in wages.

### **Employer Record-Keeping and Posting Requirements** (Rule 7)

- **Records.** Employers must keep records for each employee with the information detailed in R. 7.1, must issue employees itemized earnings statements for each pay period worked, and must retain records of that information for at least 3 years, plus the duration of any wage claim pertaining to the employee.
- **Posting.** Employers must display a COMPS Poster (available on the Division's website) in a place where employees may easily read it during the workday. If a physical posting is impractical (for example, if employees work from home, or the work site lacks a break room), the employer must provide a copy of the COMPS Order or COMPS Poster to each employee within the first month of employment. Employers that fail to post as required by Rule 7 are ineligible for employee-specific credits or exemptions.
- **Distribution.** If an employer distributes a handbook, a manual, or written or posted policies to employees, it must include a copy of the COMPS Order or COMPS Poster. If an employer requires employees to sign an acknowledgment of receiving those materials, the employer must also require a signed acknowledgement that employees were provided a copy of the COMPS Order or COMPS Poster. Employers must make a copy of the COMPS Order or Poster available upon any employee's request.
- **Translation.** If employees have limited English language ability, employers must use a Spanish-language version of the COMPS Order and Poster, if the employees speak Spanish. If another language is needed, the employer must ask the Division for a version of the COMPS Order and/or Poster in that language.

### **Complaint Rights & Procedures** (Rules 8.1-8.4)

The Division accepts complaints for unpaid minimum or overtime wages required by federal, state, or local law of up to \$7,500, but the Division may order larger awards with the addition of fines and/or penalties. The \$7,500 limit does not apply to investigations initiated by the Division, rather than by employee-filed complaints. An employee claiming unpaid wages may file **either**:

- a **lawsuit in court** to recover the amount unpaid, plus attorney fees and court costs; or
- a **written complaint with the Division**, which the Division will investigate.

Liability for wage violations may extend to not only the formal employer, but also individual owners or other responsible individuals personally, regardless of whether the employer is a corporation. [C.R.S. 8-4-101\(6\)](#). In some circumstances, failure to pay wages constitutes criminal theft as well. [C.R.S. 8-4-114](#); [8-6-116](#).

### **Reprisal and Interference Prohibition** (Rule 8.5)

Employers may not threaten, coerce, or discriminate against any person for purposes of reprisal, interference, or obstruction as to any actual or anticipated investigation, hearing, complaint, or other process or proceeding relating to a wage claim, right, or rule. Violators may face penalties under [C.R.S. 8-1-116](#), [8-1-140](#), [8-4-120](#), and/or [8-6-115](#).

### **Additional Information**

Visit the Division's [website](#), call 303-318-8441, or email [cdle\\_labor\\_standards@state.co.us](mailto:cdle_labor_standards@state.co.us).